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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,440	02/24/2004	Ronald M. McGarity	11159	4716

7590

04/28/2005

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EXAMINER

RODRIGUEZ, RUTH C

ART UNIT

PAPER NUMBER

3677

DATE MAILED: 04/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/785,440		MCGARITY ET AL.	
	<b>Examiner</b>		<b>Art Unit</b>	
	Ruth C Rodriguez		3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Priority***

1. Applicant's claim for domestic priority under 35 U.S.C. 119(e) is acknowledged.

### ***Specification***

2. The disclosure is objected to because of the following informalities: Page 1, line 6, --now abandoned-- should be inserted between "2002" and the ending period.

Correction is required.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3677

4. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Jensen (US 5,906,031).

A clip (12) comprises a pair of jaws (and a throat connecting to the jaws to urge the jaws towards each other (Figs. 1-5). A pair of bosses secured respectively to the jaws (between 30 and 16 and between 32 and 16) and a pair of operating levers (sides of 48) are slidably mounted respectively on the bosses. One of the bosses has a bottom portion and an internal spring (40) is disposed between the bottom portion and the associated on of the jaws (Figs. 1-5).

An aperture (between 34 and 40) is formed in the one jaw and a portion of the internal spring is disposed in the aperture (Figs. 1-5).

An electronic transmitting and receiving device (100) is disposed on the operating lever (C. 1, L. 11-17 and figs. 1-5).

5. Claims 1 -4 are rejected under 35 U.S.C. 102(b) as being anticipated by McGarity (US 5,946,778).

A clip comprises a pair of jaws (10,11) and a throat (12) connecting to the jaws to urge the jaws towards each other (Figs. 1-45). A pair of bosses (25) secured respectively to the jaws and a pair of operating levers (16) are slidably mounted respectively on the bosses. One of the bosses has a bottom portion (outer surface) and an internal spring (28) is disposed between the bottom portion and the associated on of the jaws (Figs. 2 and 4).

An aperture is formed in the one jaw and a portion of the internal spring is disposed in the aperture (Figs. 1-4).

An aperture is formed in the spring (at the center) and a sphere (26) is disposed in the slot (Figs. 2 and 4).

One of the operating levers comprises bottom, a slot (where 26 and 28 are located) is formed in the bottom and the sphere is slidably disposed in the slot (Figs. 2 and 4).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen.

Jensen disclose an electronic transmitting and receiving device (100) disposed on the operating lever that is slidably connected to the pair of jaws (12) in accordance with the rejection of claims 1 and 5 in paragraph 4 above. Jensen fails to disclose that the electronic transmitting and receiving device has a protective insert disposed over the device. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have a protective insert disposed over the device since the Examiner takes Official Notice that the use of a protective insert in the form of a cover is well known in the art to protect the electronic device from dirt and liquids.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Dietz (US 867,255), Tien (US 5,730,342), Jensen (US 5,906,031), Ward-Llewellyn (US 5,927,580), McGarity (US 5,946,778), French (US 6,161,741), Peele et al. (US 6,206,257 B1) and Chen-Lieh (US 6,736,136 B2) are cited to show state of the art with respect to clips having some of the features being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase the patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as PTO's mailroom processing and delivery time. For a complete list of correspondence **not** permitted by


Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP § 512). The following is an example of the format the certification might take:

(Typed or printed name of person signing this certificate)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP § 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response has been transmitted by facsimile will cause further unnecessary delays in the processing of your application, duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Ruth C. Rodríguez  
Patent Examiner  
Art Unit 3677

rcr  
April 25, 2005